

IN THE MATTER OF
GEORGE H. LEE COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 2841. Complaint, June 11, 1936—Decision, June 30, 1938

Where a corporation engaged in the sale of a vermifuge designated "Gizzard Capsules"; in advertising said capsules through printed matter accompanying the product and through newspapers and periodicals of interstate circulation—

Falsely and deceptively represented that the product was effective for all three kinds of worms and "Why bother with several remedies when one easy complete dose is so much better?"; facts being said product was not an effective vermifuge for all three kinds, nor better than separate remedies for each kind and, through its action in the case of certain kinds of such poultry pests, tended to be ineffective;

With effect of misleading and deceiving purchasing public into erroneous and mistaken belief concerning the therapeutic value, efficacy, and effect of said product, and with result that a substantial portion of said public, as a direct result of such mistaken and erroneous belief, bought same, and trade was diverted unfairly to it from competitors likewise engaged in selling and distributing products designed for similar uses and who truthfully advertised and represented the properties of their respective products and the results that might be obtained from their use; to the substantial injury of competition in commerce among the various States and in the District of Columbia:

Held, That such acts and practices were all to the prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. T. H. Kennedy, *Mr. J. T. Welch*, and *Mr. Gerard A. Rault* for the Commission.

Mr. Donald J. Burke, of Omaha, Nebr., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914, the Federal Trade Commission, having reason to believe that George H. Lee Co., a corporation, hereinafter referred to as the respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, and states its charges in that respect as follows:

PARAGRAPH 1. The respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nebraska, having its office and principal place of business at Twelfth and Harney Streets, in the city of Omaha, State of Nebraska. Respondent during the 2 years last past has been engaged in the sale of "Gizzard Capsules" and in the distribution thereof in commerce between and among the various States of the United States and the District of Columbia, and causes and has caused said merchandise, when sold, to be transported in interstate commerce from its place of business in the State of Nebraska, to purchasers thereof, some located in said State, and others located in various other States in the United States and in the District of Columbia.

PAR. 2. Respondent's "Gizzard Capsules" consist of kamala, nicotine, oil of chenopodium, copper oxide, and graphite.

PAR. 3. In the course and conduct of its said business, respondent is now and has been, for more than 2 years last past, in substantial competition with other corporations and with individuals, partnerships, and firms, engaged in the manufacture, sale, and distribution of similar preparations, in interstate commerce between and among the various States of the United States and the District of Columbia, used for purposes similar to the purposes for which respondent's "Gizzard Capsules" are used.

PAR. 4. In the course and conduct of its said business, as hereinabove described, the respondent, in soliciting the sale of and selling, in interstate commerce, "Gizzard Capsules," in advertising said product by labels upon containers of "Gizzard Capsules," and by advertisements in pamphlets, newspapers, and magazines has made many extravagant, deceptive, misleading, and false statements regarding the therapeutic value, efficacy, and effect of its "Gizzard Capsules," among which are the following:

(a) That respondent's product, "Gizzard Capsule," removes from chickens tapeworms, roundworms, and pinworms;

(b) That respondent's "Gizzard Capsule" is for all three kinds of worms;

(c) That respondent's "Gizzard Capsule" is much better than separate remedies for each kind of worm;

(d) That respondent's "Gizzard Capsules" will serve to rid fowls of either pinworms, or tapeworm heads;

PAR. 5. In truth and in fact respondent's representations hereinabove in paragraph 4 set forth and respondent's advertisements and representations in pamphlets, newspapers, and magazines, are extravagant, false, misleading, and deceptive, in the following respects:

(a) Respondent's product, "Gizzard Capsule," does not remove from chickens tapeworms, roundworms, and pinworms;

(b) Respondent's "Gizzard Capsule," is not for all three kinds of worm;

(c) Respondent's "Gizzard Capsule," is not much, or any, better than separate remedies for each kind of worm;

(d) Respondent's "Gizzard Capsule," does not serve to rid fowls of either pinworms or tapeworm heads.

PAR. 6. The respondent's advertising and representations hereinabove described, have had and still have the tendency and capacity to, and do, mislead and deceive the purchasing public regarding the therapeutic value, efficacy, and effect of "Gizzard Capsules," and further, as a direct consequence of the deceptive actions and representations of the respondent and the erroneous and mistaken beliefs induced by said acts as herein set out, the purchasing public has purchased respondent's "Gizzard Capsules" with a result that trade has been unfairly diverted to the respondent from competitors likewise engaged in the business of distributing or selling products designed for similar usage who truthfully advertise and represent the properties of their respective products and the results that may be expected to be obtained from a use thereof. As a result thereof, substantial injury has been, and is now being, done by respondent to substantial competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 7. The acts, practices, and representations of the respondent hereinabove set forth are all to the injury and prejudice of the public and to the competitors of the respondent in interstate commerce within the intent and meaning of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 11th day of June 1936, issued and on June 15, 1936, served its complaint in this proceeding upon respondent, George H. Lee Co., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Thomas H. Kennedy, attorney for the Commission, and in opposition to the allegations of the complaint by Donald J. Burke, attorney for

the respondent, before W. W. Sheppard, an examiner of the Commission, theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on said complaint, answer thereto, testimony, and other evidence, briefs in support of the complaint and in opposition thereto, and the oral argument of counsel; and the Commission having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, George H. Lee Co., is a corporation, created by and existing under the laws of the State of Nebraska, with its office and principal place of business in the city of Omaha, Nebr. Respondent for several years last past has been engaged in the sale of a vermifuge sold under the name of "Gizzard Capsules," and in the distribution of this product in commerce between and among the various States of the United States and in the District of Columbia.

Respondent has caused, and causes, this product when sold to be transported from its place of business in the State of Nebraska to purchasers located in various States of the United States other than the State of Nebraska, and in the District of Columbia.

PAR. 2. In the course and conduct of its said business, respondent is now, and has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the sale and distribution of vermifuges in commerce between and among the various States of the United States and in the District of Columbia.

Respondent for the past 7 years has maintained a course of trade in said product in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its said business, respondent, in soliciting the sale of and in selling its preparation "Gizzard Capsules" and in advertising said product, through printed matter accompanying said product and advertisements in newspapers and magazines having an interstate circulation, has made deceptive, misleading, and false statements concerning the therapeutic value, efficacy, and effect of its "Gizzard Capsules." Among said representations are the following:

Gizzard Capsules for all three kinds of worms—Large Tape—Large Round—Pins. Well known, widely advertised—Proved more effective.

Order

27 F. T. C.

Most wormy chickens have two or more kinds of worms. Why bother with several remedies when one easy complete dose is so much better? * * *

* * * The Gizzard Capsule is for Large Round, Pins and all kinds of Large Tapes * * *

PAR. 4. Respondent's product "Gizzard Capsule" is a combination of kamala, kamala extract, oil of chenopodium, nicotine, copper oxide, and graphite all encased in an insoluble coating.

PAR. 5. The expert and scientific testimony in this case, shows, and the Commission finds, that respondent's product is not an effective vermifuge for all three kinds of worms, nor is it better than separate remedies for each kind of pinworms or for tapeworms in poultry. When administered to fowl infested with tapeworms this product tends to shear off the tapeworm strobilae or chain or segments, leaving the tapeworm heads attached to the intestines of the fowl. These heads are capable of growing, and do quickly grow, new segments.

PAR. 6. Respondent's representations, herein described, have had and now have a tendency and capacity to, and do, mislead and deceive the purchasing public into an erroneous and mistaken belief concerning the therapeutic value, efficacy, and effect of "Gizzard Capsules." A substantial portion of the purchasing public, as a direct result of said mistaken and erroneous belief, have purchased respondent's product with the result that trade has been diverted unfairly to the respondent from competitors likewise engaged in the business of selling and distributing products designed for similar usage who truthfully advertise and represent the properties of their respective products and the results that may be obtained from their use. As a result thereof, substantial injury has been done and is now being done by respondent to competition in commerce among and between various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce, within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony, and other evidence taken before W. W. Sheppard, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and oral arguments by Gerard

A. Rault, counsel for the Commission, and by Donald J. Burke, counsel for the respondent, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent George H. Lee Co. its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of its Gizzard Capsules, or any other product containing substantially similar ingredients, whether sold under the same name or under any other name in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing:

1. That said product is a remedy or vermifuge for all three kinds of worms in poultry;

2. That said product will remove pinworms from poultry;

3. That said product will remove tapeworms from poultry unless it be represented with equal conspicuousness that this product merely shears off the strobilae or chain of segments of the tapeworm, leaving the head of the worm, capable of growing new segments, attached to the intestines of the fowl.

It is further ordered, That the respondent shall, within 60 days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF

WAIN'S LABORATORY, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 3009. Complaint, Dec. 4, 1936—Decision, June 30, 1938

Where a corporation engaged in offering for sale and selling a medicinal compound for the treatment of asthma and related bronchial ailments—

- (a) Represented in testimonials and advertisements inserted in newspapers, periodicals, circulars, and pamphlets distributed to various purchasers at various points throughout the United States, that said product was free from all dangerous drugs, opiates, and heart depressants, through such statements as “* * * absolutely guaranteed to contain no habit-forming drugs, narcotics, opiates, or heart depressants whatsoever,” facts being principal ingredient thereof was potassium iodide, indiscriminate distribution thereof without medical supervision was very dangerous, as was constant use of product unsupervised by a physician, and product, while possibly useful in small doses, properly supervised, in relieving bronchitis, was capable of harm and should not be taken by those having tuberculous lesions or tendencies, and should carry warning to such effect, and potassium base thereof was a depressant poison and indiscriminate consumption of product might cause chronic iodine cachexia;
- (b) Represented that said product had overcome asthma and hay fever for thousands of sufferers over a period of years and that it was an effective remedy for such afflictions and related bronchial ailments, through such statements as “Thousands of stubborn cases have responded to Wain's Compound where other remedies were used without obtaining relief,” “* * * has promptly relieved suffering caused by attacks of Bronchial Asthma or Bronchial Coughs for thousands of sufferers all over the United States,” “* * * a proven effective home treatment has brought prompt, blessed relief to thousands suffering from torturing attacks of Bronchial Asthma and Bronchial Coughs,” “* * * was the only medicine that ever gave me real relief and enabled me to sleep soundly * * *,” “For I know it saved my life when everything else I had tried failed.” etc.; facts being it was not a competent treatment nor effective remedy for such ailments and might not properly be represented as remedy for asthma, hay fever, bronchial paroxysms, or coughs, relief of which is contingent on other influences, and it was only a palliative with no curative effect on the underlying cause of disease; and
- (c) Represented that it was “a new and startling remedy”; facts being it was not a new or startling discovery and active ingredient thereof, potassium iodide, had been used for generations under medical supervision;

With capacity and tendency to mislead and deceive a substantial number of the purchasing public into the erroneous and mistaken belief that said representations were true, and cause them, because of such belief, to buy its said products, and with result of thereby diverting unfairly substantial trade in commerce to it from competitors who do not misrepresent the character and quality of their products: